

CABINET FOR FAMILIES AND CHILDREN

DEPARTMENT FOR SOCIAL INSURANCE

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DIVISION OF CHILD SUPPORT ENFORCEMENT

Information Release #726

TO: All IV-D Agents

DATE: October 15, 1997

SUBJECT: Venue for Modification of Child Support Orders

The question has arisen as to where venue lies when a party seeks to modify a child support order and the child or parent no longer lives in the county in which the order was entered. This question has arisen because of confusion about whether a motion for modification is filed in the county in which the action originated or in the county in which the petitioner now resides.

The attached legal opinion from the Office of the Attorney General states that unless the parties agree to a change of venue, proceedings to modify a child support order must be initiated by a motion filed in the court that entered the order. **For the purpose of modifying an existing child support order, venue is with the court that issued the order.**

STEVEN P. VENO, DIRECTOR

DIVISION OF CHILD SUPPORT ENFORCEMENT

Attachment

Cross Reference: Handbook Subsection 27.160, Change of Venue





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September 23, 1997

Subject: Venue for modification of child support decrees

Requested by: William K. Moore Jr., general counsel for Cabinet for Human Resources

Written by: Ross T. Carter

Syllabus: Venue for modification of child support decrees lies in court that entered the decree

Statutes construed: None

OAGs cited: None

Opinion of the Attorney General

We have been asked where venue lies when a party seeks to modify a child support decree and the child or parent no longer lives in the county that entered the decree.

The question arises because of confusion whether the petition for modification should be filed in the county where the action originated, or in the county where the petitioner now resides. According to the letter requesting this opinion, in some instances independent actions have been maintained in both counties. The opposite result has also been observed: county attorneys in both counties, each believing that venue lies in the other county, declined to proceed with the case.

We will begin by disposing of the notion that modification of a child support decree may be modified by filing an independent action. In KRS 403.213(1) there is an explicit reference to the procedure for modification of a



child support decree by filing a motion for modification. In *Price v Price*, Ky, 912 SW 2d 44, 46 (1995), the court held that this statute "mandates that child support orders may only be modified prospectively and only after a motion for modification." The correct document to file is, therefore, a motion for modification, not a petition for modification.

A motion, of course, may be filed only with the court hearing the case. Filing in another court would require a change of venue. Generally, venue may be changed only by agreement or by a showing that a fair trial cannot be obtained in the court where the action is pending. KRS 452.010.

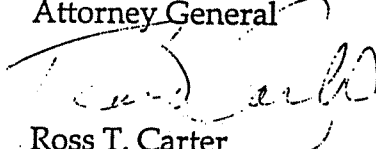
In *Stewart v Sandifur*, Ky, 294 SW 2d 923 (1956), the court specifically examined the question of venue in proceedings to modify a child support decree. The court held that venue remains in the court that entered the decree. Otherwise, modifications to a decree

could conceivably be litigated in a successive number of counties if the parties should continue to be in accord in their choice of residence. Thus, the custody and welfare of the child would be subject to litigation in various courts, resulting in a variety of judgments, each modifying the previous adjudication. This would create undesirable confusion which would destroy the orderly process of the judicial system. It would be better for the parties to suffer some inconvenience than to destroy an old and well-established rule of law.

Id at 924.

Stewart v Sandifur has not been overruled. The court's holding is consistent with the venue statute, KRS 452.010. We therefore conclude that, unless the parties agree to a change in venue, proceedings to modify a child support decree must be brought by motion filed with the court that entered the decree.

Albert B. Chandler III
Attorney General


Ross T. Carter
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